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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,460	03/06/2006	Peter Hudson	052209-0138	8207
22428 7590 09/20/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER COLEMAN, BRENDA LIBBY	
			ART UNIT	PAPER NUMBER
			1624	
			MAIL DATE	DELIVERY MODE
			09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,460

Applicant(s)

HUDSON ET AL.

Examiner

Brenda L. Coleman

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,36-40,50-53 and 55-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,36-40,50-53 and 55-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-6, 36-40, 50-53 and 55-63 are pending in the application.

This action is in response to applicants' amendment filed July 9, 2007. Claims 4-6 have been amended.

Response to Amendment

Applicant's amendments filed July 9, 2007 have been fully considered with the following effect:

1. The applicants' amendments are sufficient to overcome the 35 U.S.C. § 112, second paragraph rejections labeled paragraph 2a), b), d), e), g), h), j), k) and l) of the last office action, which are hereby **withdrawn**. However, with regards to the 35 U.S.C. § 112, second paragraph rejection labeled paragraph 2c), f) and i) of the last office action, the applicant's amendments and remarks have been fully considered but they are not persuasive.

c) The applicants' stated that as recited in claim 1, R⁴ may be an alkyl group and that pages 9-10 of the application define the term "alkyl" which includes "linear, branched and cyclic alkyl groups". However, the definition of alkyl in the specification also includes a carbon count of 1 to 6 of which cylcohexylmethyl has 7 carbon atoms.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicant regards as the invention, for reasons of record and stated above.

f) The applicants' stated that claim 32 further defines the recited composition by a physical characteristic (amount of active agent), however, this is not so. There is no indication what the dosing amount of the active agent is in the composition.

Claims 4-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicant regards as the invention, for reasons of record and stated above.

i) The applicants' stated that as recited in claim 1, R⁴ may be an alkyl group and that pages 9-10 of the application define the term "alkyl" which includes "linear, branched and cyclic alkyl groups". However, the definition of alkyl in the specification also includes a carbon count of 1 to 6 of which cyclohexylmethyl has 7 carbon atoms

Claim 62 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicant regards as the invention, for reasons of record and stated above

2. With regards to the provisional obviousness-type double patenting rejection as being unpatentable over claims 1-11 of copending Application No. 10/570,628 of the last office action, the applicants requested that this rejection be held in abeyance at this time.

Claims 1-6, 36-40, 51 and 55-63 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over

claims 1-11 of copending Application No. 10/570,628, for reasons of record and stated above.

3. With regards to the provisional obviousness-type double patenting rejection as being unpatentable over claims 30, 70, 71, 73 and 74 of copending Application No. 11/659,798 of the last office action, the applicants requested that this rejection be held in abeyance at this time.

Claims 1-6, 36-40, 50-53 and 55-63 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 30, 70, 71, 73 and 74 of copending Application No. 11/659,798, for reasons of record and stated above.

4. With regards to the provisional obviousness-type double patenting rejection as being unpatentable over claims 1-6, 16-19, 21-32, 35 and 36 of copending Application No. 10/486,715 of the last office action, the applicants requested that this rejection be held in abeyance at this time.


Claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 16-19, 21-32, 35 and 36 of copending Application No. 10/486,715, for reasons of record and stated above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brenda L. Coleman whose telephone number is 571-272-0665. The examiner can normally be reached on 9:30-6:00.

Art Unit: 1624

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Brenda L. Coleman
Primary Examiner Art Unit 1624
Monday, September 17, 2007